

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TONY OVIEDO ZELAYA,

Defendant.

CR 24–18–BU–DLC

ORDER

Before the Court is United States Magistrate Judge Kathleen L. DeSoto’s Findings & Recommendation Concerning Plea. (Doc. 19.) Because neither party objected, they are not entitled to *de novo* review. 28 U.S.C. § 636(b)(1); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). Therefore, the Court reviews the Findings and Recommendation for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a “definite and firm conviction that a mistake has been committed.” *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000).

Zelaya is charged with one count of illegal reentry, in violation of 8 U.S.C. § 1326(a) and (b)(1), as set forth in Count 1 of the Indictment. (Doc. 3.) Judge DeSoto recommends that this Court accept Zelaya’s guilty plea as to Count I after Zelaya appeared before her pursuant to Federal Rule of Criminal Procedure 11.

The Court finds no clear error in Judge DeSoto's Findings and Recommendation and adopts them in full, including the recommendation to defer acceptance until sentencing when the Court will have reviewed the Presentence Investigation Report.

Accordingly, IT IS ORDERED that Judge DeSoto's Findings and Recommendation (Doc. 19) is ADOPTED in full.

IT IS FURTHER ORDERED that Zelaya's motion to change plea (Doc. 13) is GRANTED.

IT IS FURTHER ORDERED that Zelaya is adjudged guilty as charged in Count 1 of the Indictment.

DATED this 13th day of September, 2024.



Dana L. Christensen, District Judge
United States District Court